IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

TUESDAY, THE 17TH OCTOBER 2006 / 25TH ASWINA 1928

MFA.No. 568 of 2003()

WCC.45/1999 of W.C.C.,THRISSUR

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APPELLANT: SECOND OPPOSITE PARTY:

THE ORIENTAL INSURANCE CO.LTD.,
ANGAMALY, REPRESENTED BY ITS ASSISTANT
MANAGER, REGIONAL OFFICE,
ERNAKULAM NORTH, KOCHI-18.

BY ADV. SRI.GEORGE CHERIAN (THIRUVALLA)

RESPONDENTS: APPLICANT:

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1. P.A. DAVIS, S/O. ANTHONY,
PALLISSERY HOUSE, P.O. PARIYARAM,
CHALAKKUDY.

2. P.A. JOSE, S/O. ANTHONY, OWNER
OF BAJAJ M-80-KL-81-6074,
PALLISSERY HOUSE, P.O. CHATHIKULAM,
KAMALLAM, CHALAKUDY.

BY ADV. SRI.P.V.CHANDRA MOHAN

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 17/10/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

Thottathil B. Radhakrishnan, J.

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M.F.A.No.568 of 2003

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Dated this the 16th day of October, 2006.

JUDGMENT

Is an insurer, who had issued a policy of insurance governed by Section 147(1) of the Motor Vehicles Act, 1988, hereinafter referred to as the "M.V.Act", liable to satisfy an award made under the Workmen's Compensation Act, 1923, for short, the W.C.Act", granting compensation to a workman for injuries sustained while driving a motor vehicle, though he was not employed, specifically, as a driver? This is the short issue, a substantial question of law, that arises for decision in this appeal by the insurer.

2. The claim, before the Commissioner, was on the ground that the applicant was employed by his brother, the first opposite party in his business of selling fish and in the course of such employment, the applicant was injured while riding the motor cycle to Pariyaram from Chalakudy for selling fish. The second opposite party, the insurer contested. The Commissioner

framed issues, including as to whether the applicant was a workman as defined in the W.C.Act and whether there was an employer-employee relationship between the applicant and first opposite party and whether the accident arose out of and in the course of employment of the applicant. The Commissioner believed the version of the applicant as A.W.2 regarding his employment and acted on the finding in Ext.M2 investigation of the insurer to hold that the applicant sustained injuries in the accident on 17-12-1998, that he is a workman as defined in Section 2(1)(n) of the W.C.Act and that he is entitled to compensation for the accident. The Commissioner fixed the compensation, on the basis of the disability certificate and other relevant facts, having regard to the various parameters.

3. Supporting the appeal, the learned counsel for the insurer urged that the benefit of proviso (i) to Section 147(1) of the M.V.Act would come into play only if the applicant is proved to be a workman employed as a driver, thus engaged exclusively in the driving of the vehicle. It is urged that mere driving of the

vehicle by a workman, whose employment is not as a driver, will not bring him under the cover of the said proviso.

4. The Division Bench of this Court held in **National Insurance Company Ltd. v. Nimmy and others (2002 (3) L.L.J. 375): (2002(1) K.L.J.811)**, referred to in the impugned order, that the words "engaged in driving the vehicle" in Clause (a) of the first proviso to Section 147(1) of the M.V.Act cannot be interpreted to hold that the person should be engaged as a permanent driver. The learned counsel for the appellant urged that the issue raised by him is not covered by the said precedent, though rendered on similar facts. He urged that the said decision is only to the effect that a driver need not be engaged on a permanent basis, while the argument in the appeal in hand is that the employment should be exclusively as a driver.

5. Per contra, the learned counsel for the first respondent applicant urges that the Commissioner has

found on facts that the applicant has established an employer-employee relationship between him and the first opposite party and such finding of fact is not to be interfered with in an appeal under Section 30 of the W.C.Act, which prescribes intereference only on a substantial question of law. It is further urged that having regard to the manner in which the Division Bench has decided **Nimmy's case** (supra), the aforesaid case, the distinction now drawn by the appellant does not survive.

6. Since the first among the provisos to Section 147(1) of the M.V.Act is built with exclusive reference to the provisions of the W.C.Act, the question to be considered depends upon the interpretation of the said proviso and the relevant provisions of the W.C.Act.

7. Provisos to Section 147(1) reads as follows:

> "Provided that a policy shall not be required-
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> (i) to cover liability in respect of the death, arising out of and in the course of his employment,

> of the employee of a person insured by the policy or in respect of bodily injury sustained by such an employee arising out of and in the course of his employment other than a liability arising under the Workmen's Compensation Act, 1923, (8 of 1923) in respect of the death of, or bodily injury to, any such employee-
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> (a) engaged in driving the vehicle, or
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> (b) if it is a public service vehicle engaged as a conductor of the vehicle or in examining tickets on the vehicle, or
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> (c) if it is a goods carriage, being carried in the vehicle, or
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> (ii) to cover any contractual liability."

8. Section 3(1) of the W.C.Act, excluding the proviso thereto, is relevant in the context. It reads as follows:

> "If personal injury is caused to a workman by accident arising out of and in the course of his employment, his employer shall be liable to pay compensation in accordance with

the provisions of this Chapter."

9. In terms of Section 3(1) thereof, the liability of an employer to pay compensation in accordance with the provisions of Chapter II of the W.C.Act, is for the personal injury caused to a workman by the accident arising out of and in the course of his employment. The thrust is on the course of employment. While drafting the first proviso to Section 147 of the M.V.Act, the legislature has used the terms "employment", "employed" and "engaged". The liability that is required to be covered in terms of the first proviso is the compensation due on account of injury arising out of and in the course of his "employment", suffered by the employee, while Clause (a) under proviso (i) uses the word "engaged". The legislature by the use of the words "employment", "employed" and "engaged" in the M.V.Act, 1988, with reference to W.C.Act, 1923, a legislation that was already in existence, the clear distinction between the concept of "employment" and "engagement" is maintained. Hence, the words "engaged" in Clause (a) of Proviso (i)

is not to be read as "employment". Therefore, the legislative intention is clear that any injury sustained by an employee during the course of his employment has to be compensated if bodily injury or death has occasioned during his engagement in driving the vehicle. So much so, the word "engaged" in Clause (a) of proviso (i) indicates the duty or activity carried on by the workman at the time of suffering the accident, resulting in his death or in injuries to him. Hence, it would be an impermissible and an extremely restricted approach to hold that a person, who was employed as a driver, would alone fall under Clause (a) of Proviso (i). Therefore, the only manner in which Proviso (i) (a) of Section 147(1) can be interpreted is by holding that it is not necessary for a person to be employed exclusively as a driver under an employer to sustain a claim referable to the said provision and one who is engaged in driving the vehicle, thereby meaning, driving the vehicle at the time of the accident, is entitled to compensation and insurance covered under the said proviso, provided he was in the employment of the employer and therefore a workman and still further,

that he was driving the vehicle at the time of the accident under due authorisation of the employer.

10. Section 147(1) of the M.V.Act, 1988, including its provisos, as also the provisions of Section 3 of the W.C.Act, are beneficial legislations with a social objective and are therefore expected to be interpreted in favour of those for whose benefit the said legislations are made, even if two views are possible. I have therefore no hesitation to lean in favour of the one enunciated above.

11. No other questions are raised.

In the result, this appeal fails. The same is dismissed.

Thottathil B.Radhakrishnan,
Judge.

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Thottathil B. Radhakrishnan, J.

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M.F.A.No.568 of 2003

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JUDGMENT

Dated:16-10-2006